321. Although we continue to believe that JSAs may have some positive effects on the local radio industry, we find that the threat to competition and the potential impact on the influence over the brokered station outweighs any potential benefits and requires attribution. As with our decision in 1992 to attribute radio LMAs, we find that modification of our regulation also is warranted given the need for our attribution rules to reflect accurately competitive conditions of today's local radio markets.[699] We noted then, and it still holds true today, that it would be inconsistent with our rules to allow a local station owner to substantially broker a station, whether pursuant to an LMA or JSA, that it could not own under the local radio ownership limits.[700]

322. Some commenters argue that we should continue to exempt JSAs from attribution because they produce a public interest benefit.[701] Others believe that we either should treat JSAs the same as LMAs in our competition analysis,[702] or that we should require prior approval for both JSAs and LMAs.[703] Clear Channel argues that "[n]othing has transpired over the succeeding two years [since we decided not to attribute JSAs] that would justify reconsideration of these positions."[704] We disagree with Clear Channel Our experience administering the local radio ownership rule convinces us that we need to modify our attribution policy with regard to JSAs for the above reasons. Although, like LMAs, JSAs might produce public interest benefits, we find that JSAs may convey sufficient influence or control over advertising to be considered attributable.[705]

323 We believe that a 15 percent advertising time threshold will identify the level of control or influence that would realistically allow holders of such influence to affect core operating functions of a station, and give them an incentive to do so. At the same time, a 15 percent threshold will allow a station the flexibility to broker a small amount of advertising time through a JSA with another station in the same market without that brokerage rising to an attributable level of influence. We believe that the 15 percent threshold (which is the same threshold used for determining attribution of radio and television LMAs)

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699 In 1992, based on concerns about competition and diversity, we attributed radio LMAs where an entity owns a station in a local radio market and brokers another station in the market for more than 15 percent of the brokered station's broadcast hours per week. *1992 Radio Ownership Report and Order*, 7 FCC Rcd at 2788 In 1999, we attributed television LMAs. *See 1999 Attribution Report and Order*, 14 FCC Rcd at 12597 ¶ 83.

700 *1992 Radio Ownership Report and Order*, 7 FCC Rcd at 2788- 89 ¶ 65

701 Clear Channel Comments in MM Docket No. 01-317 at 27; Cox Comments in MM Docket No. 01-317 at 17-18, Cumulus Comments in MM Docket No 01-317 at 15 n 10, Clear Channel Reply Comments in MM Docket No. 01-317 at 5 n 7

702 Dick Broadcasting Comments in MM Docket No 01-317 at 8, Eure Comments in MM Docket No. 01-317 at 2; Idaho Wireless Comments in MM Docket No. 01-317 at 9; Hodson Comments in MM Docket No. 01-317 at 9.

703 North American Comments in MM Docket No 01-317 at 17-18, Dick Broadcasting Comments in MM Docket No 01-317 at 8, Idaho Wireless Comments in MM Docket No 01-317 at 9.

704 Clear Channel Comments in MM Docket No. 01-317 at 27.

705 As evidence of potential adverse competitive effects pursuant to the interim policy adopted in the *Local Radio Ownership NPRM*, we considered the presence of both LMAs and JSAs in the relevant radio market *Local Radio Ownership NPRM*, 16 FCC Rcd at 19896 ¶ 86

balances these interests.[706]

324. Under our modified rules, JSAs currently in existence will be attributable. Parties with existing, attributable JSAs in Arbitron Metros under our new rules will be required to file a copy of the JSA with the Commission within 60 days of the effective date of this *Order*.[707] For JSAs involving stations located outside of Arbitron Metros, we will require such JSAs to be filed within 60 days of the effective date of our decision in Docket No. 03-130, unless a different date is announced in that decision. In addition, we are modifying FCC Application Forms 314 and 315 to require applicants to file attributable JSAs at the time an application is filed, regardless of whether the markets implicated by the application are located in Arbitron Metros.

325 *Existing JSAs*. We are aware that attribution of in-market radio JSAs may affect licensees' compliance with the modified local radio ownership rules. In addition, we do not want to unnecessarily adversely affect current business arrangements between licensees and brokers Therefore, we will give licensees sufficient time to make alternative business arrangements where they have in-market JSAs entered into prior to the adoption date of this *Order* that would cause them to exceed relevant ownership limits In such situations, parties will have 2 years from the effective date of this *Order* to terminate agreements, or otherwise come into compliance with the local radio ownership rules adopted herein.[708] However, if a party sells an existing combination of stations within the 2-year grace period, it may not sell or assign the JSA to the new owner if the JSA causes the new owner to exceed any of our ownership limits, the JSA must be terminated at the time of the sale of the stations. JSAs that do not cause a party to exceed the modified local radio rules may continue in full force and effect and may be transferred or assigned to third parties. Finally, parties are prohibited from entering a new JSA or renewing an existing JSA that would cause the broker of the station to exceed our media ownership limits.

3. Waiver Standards

326 In the *Local Radio Ownership NPRM*, we requested comment on how we should analyze proposed radio station transactions involving failed, failing, unbuilt, or silent stations.[709] We presented this question in terms of our consideration of a case-by-case competition analysis of radio station transactions (as opposed to requesting specific comment on potential waiver standards), and we in fact received very few comments addressing this issue.[710] In light of our rejection of a case-by-case analysis for radio transactions, the other changes we are making to the local radio ownership rule, and the dearth of comments on this issue, we decline at this time to adopt any specific waiver criteria relating to radio station ownership. Parties who believe that the particular facts of their case warrant a waiver of the local

[706] *See 1999 Attribution Report and Order*, 14 FCC Rcd at 12598 ¶ 85 n 183

[707] Both the licensee and the broker should submit copies of their JSAs as supplements to their Ownership Reports on file at the Commission.

[708] This includes JSAs involving radio stations in non-Metro markets. We believe the two-year time grace period will give sufficient time for us to conclude the proceeding in MB Docket No 03-130 and give parties sufficient time thereafter to take any necessary action to come into compliance with our media ownership rules.

[709] *Local Radio Ownership NPRM*, 16 FCC Rcd at 19891-92 ¶¶ 74-77

[710] *See* MMTC Comments in MM Docket No 01-317 at 53.

radio ownership rule may seek a waiver under the general "good cause" waiver standard in our rules.[711]

C. Cross Ownership

327 In this section we address (1) the newspaper/broadcast cross-ownership rule[712] and (2) the radio-television cross-ownership rule[713] to determine whether they are necessary in the public interest pursuant to Section 202(h). Based on the record in this proceeding, we find that neither our current nation-wide prohibition on common ownership of daily newspapers and broadcast outlets in the same market nor our cross-service restriction on commonly owned radio and television outlets in the same market, is necessary in the public interest. With respect to both rules, we conclude that the ends sought can be achieved with more precision and with greater deference to First Amendment interests by modifying the rules into a single set of cross-media limits described below.

1. Newspaper/Broadcast Cross-Ownership Rule

328. Adopted in 1975, the newspaper/broadcast cross-ownership rule prohibits in absolute terms common ownership of a full-service broadcast station and a daily newspaper when the broadcast station's service contour encompasses the newspaper's city of publication [714] The rule was intended to promote media competition and diversity,[715] yet the rule makes no allowance for the size of the market at issue, the number of broadcast outlets or newspapers in the market, or the variety of other media interests that serve the market. When it adopted the rule, the Commission grandfathered combinations in many markets (so long as the ownership of the combination remained the same), but it required divestiture of properties in highly concentrated markets. These so-called highly concentrated markets were those in which a combination of newspaper and broadcast outlets would be expected to be the most harmful to media diversity.

329 The Commission examined the newspaper/broadcast cross-ownership rule and several other broadcast ownership rules in its first biennial review in 1998.[716] The Commission concluded in its 1998 *Biennial Review Report* that the newspaper/broadcast cross-ownership rule continued to serve the public interest because it furthered diversity, and therefore should be retained.[717] However, the Commission noted that the rule might not be necessary to achieve its intended public interest benefits under all

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711 47 C F R § 1.3

712 47 C F R § 73 3555(d).

713 47 C F R § 73.3555(c).

714 For AM radio stations, the service contour is the 2mV/m contour, 47 C.F R § 73.3555(d)(1); for FM radio stations, the service contour is the 1mV/m contour, *id.* § 73 3555(d)(2); for TV stations, the service contour is the Grade A contour, *id* § 73.3555(d)(3) A daily newspaper is one that is published in the English language four or more times per week *Id* § 73 3555 n.6

715 *1975 Multiple Ownership Second Report and Order*, 50 F.C C.2d at 1074.

716 *1998 Biennial Regulatory Review, Notice of Inquiry*, 13 FCC Rcd 11276 (1998) (*"Biennial NOI"*) The Commission incorporated the record from the *Newspaper/Radio NOI* into the record of the *Biennial NOI* *See id.* at 11286 ¶ 30.

717 *1998 Biennial Review Report*, 15 FCC Rcd at 11105-08 ¶¶ 89-93.

circumstances More specifically, the Commission stated that "[t]here may be instances, for example, in which, given the size of the market and the size and type of the newspaper and broadcast outlet involved, sufficient diversity and competition would remain if a newspaper/broadcast combination were allowed."[718] Thus, the Commission committed to undertaking a rulemaking proceeding to tailor the rule accordingly.[719] That proceeding was commenced in 2001,[720] and later was made part of this biennial review proceeding [721]

330. Upon review, we now conclude that (1) the rule cannot be sustained on competitive grounds, (2) the rule is not necessary to promote localism (and may in fact harm localism), and (3) most media markets are diverse, obviating a blanket prophylactic ban on newspaper-broadcast combinations in all markets [722] Instead, we will review proposed license transfers and renewals involving the combination of daily newspapers and broadcast properties only to the extent that they would implicate the cross-media limits discussed below.

a. Competition

331. We first define the relevant product and geographic markets in which broadcasters and newspapers compete, and then assess whether the rule is necessary to promote competition in these markets As we noted in the newspaper/broadcast proceeding, our focus is on the primary economic market in which broadcast stations and newspapers compete. advertising.[723] Our concern is not related to competition in advertising markets themselves, but is instead directed at the ability of broadcasters to compete for advertising dollars. If free over-the-air broadcasting is to remain vibrant, broadcasters must be able to organize efficiently and compete for advertising dollars. We look, therefore, to the sole source of revenue for these stations – advertising – to define the product market.[724]

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[718] *Id* at 11105 ¶ 88 The Newspaper Association of America ("NAA") challenged the Commission's decision not to repeal the rule *Newspaper Ass'n of America v FCC*, Case No 00-1375 (D.C. Cir. filed Aug 16, 2000). By order dated August 30, 2000, the court held the case in abeyance

[719] *Id* In its 2000 biennial regulatory review proceeding, the Commission did not alter the recommendations it had made with respect to the newspaper/broadcast cross-ownership rules in the 1998 biennial review proceeding *See 2000 Biennial Regulatory Review*, 16 FCC Rcd 1207 (2001)

[720] *Newspaper/Broadcast Cross-Ownership NPRM, supra.*

[721] *Notice,* 17 FCC Rcd at 18506 ¶ 7.

[722] A number of parties raise Constitutional objections to the rule. *See, e g.*, NAA Comments at 102-14. To the extent that our local broadcast ownership regulatory framework may prohibit some newspaper/broadcast combinations, we addressed this argument in the Legal Framework section, above. We address the comments of those parties who have argued that we should change the way we apply the rule in primarily Spanish language markets (*e g* , Arso Comments and Caribbean Comments in MM Docket No 01-235) in the section on Cross-Media Limits, *infra*

[723] *Newspaper/Broadcast Cross-Ownership NPRM*, 16 FCC Rcd at 17292 ¶ 19.

[724] A product market includes identical products, products with such negligible differences that buyers regard them as substitutes, and other products that buyers regard as such close substitutes that a slight price increase in one will induce shifts of demand to the other. *See DOJ/FTC Merger Guidelines*

332 We conclude, based on the record in this proceeding, that most advertisers do not view newspapers, television stations, and radio stations as close substitutes. To begin with, the Department of Justice and several federal courts have concluded that the local newspaper market is distinct from the local broadcast market [725] This conclusion is supported by a number of commenters and MOWG Study No 10, by Anthony Bush, which found "weak substitutability" between various local media outlets for purposes of local advertising sales [726] Cox argues, for instance, that advertisers place ads in television, radio, and newspapers for different reasons [727] CWA asserts that newspapers and television are separate local media markets, with weak substitution by consumers and advertisers [728] Gannett and Hearst argue that very little advertising substitution exists between daily newspapers and broadcast outlets. They claim that newspapers, radio, and TV attract different portions of local advertising dollars, which refutes the notion that common ownership has any adverse impact on advertising rates or any other competition concerns [729] Thus, at least for purchasers of advertising time, we find that newspapers, television, and radio are not good substitutes and therefore make up distinct product markets A newspaper/broadcast combination therefore is not a horizontal merger and cannot adversely affect competition in any product market. Neither is the combination a vertical merger, because neither type of entity sells inputs to the other in the production chain, as in a supplier-customer relationship.[730]

333 Some commenters criticize MOWG Study No. 10 and argue that radio, TV, and newspapers, compete vigorously for advertising dollars.[731] Both Economists Incorporated ("EI") and

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[725] *See, e g , United States v Jacor Communications Inc* , 1996 WL 784589 at *10 (S.D Ohio 1996), *Community Pub Inc v Donrey Corp* , 892 F Supp. 1146, 1155-57 (W D. Ark 1995).

[726] MOWG Study No 10 Bush develops a model of business behavior in purchasing advertising for use in sales activities. He estimates elasticities of substitution and finds weak substitutability for advertising between newspaper, broadcast TV, and radio.

[727] Cox argues, for example, that while television is used to build and maintain a brand, newspapers are used to move volumes of products. *See* Cox Comments at 17-18

[728] *See* CWA Comments at 9-1; AFL-CIO Comments, Baker Study, at 5-7.

[729] *See* Gannett Comments at 15-17, Hearst Comments at 8-10; Hearst Comments in MM Docket No. 01-235 at 14

[730] *See* Hearst-Argyle Reply Comments at 4 n 8 (citing *Missouri Portland Cement Co v Cargill, Inc* , 498 F.2d 851 (2d Cir 1974), *Emhart Corp. v USM Corp.*, 527 F.2d 177 (1st Cir. 1975)) Although the merging of newspapers and television stations may result in sharing of inputs, sharing of inputs is distinct from vertical integration, which involves merging of firms where the output of one becomes the input of the other.

[731] Many of the commenters who assert that there is vigorous competition and strong substitution among media advocate elimination of the cross-ownership rules. They argue that consolidation of owners between any two media will not result in a significant increase in advertising prices because advertisers substitute across virtually all media. Hearst-Argyle, for example, asserts that its own analysis of prior studies show that local advertisers view newspaper and broadcast advertising as substitutes for one another, and national advertisers may view newspaper and broadcast advertising similarly It concludes that all these results, combined with the increase in the number of media outlets, support repeal of the rule Hearst-Argyle at 1-8 (referencing Barry J Seldon, R. Todd Jewell, & Daniel M O'Brien, *Media Substitution and Economies of Scale in Advertising,* 18 INT'L J OF INDUS ORG 1153 (2000); Barry J. Seldon & Chulho Jung, *Derived Demand for Advertising Messages and Substitutability Among the Media,* 33 Q. REV OF ECON AND FIN 71 (1993)).

Jerry Hausman argue that MOWG Study No. 10 contains measurement errors.[732] These commenters argue that there are two sources of measurement error: (1) the SQAD radio and television advertising rate data measures national and regional, but not local advertisers;[733] and (2) the study, rather than measuring actual local newspaper ad prices, constructs them. Both critiques suggest that these measurement errors lead to bias EI does not explain whether it believes the bias is in the direction toward too little or too much substitution among media, but Hausman argues that MOWG Study No. 10 is biased in the direction of too little substitution.[734] We recognize the measurement errors associated with the use of SQAD data. Bush used this data because there is no source of data available to the public on actual local advertising prices. As the best public data available, we believe the SQAD data is a reasonable proxy for actual local advertising prices.[735] As for Hausman's claim that use of SQAD prices biases the results in the direction of too little substitution, we believe that Hausman's arguments apply to a simple linear regression, not the model or estimation technique used by Bush. We believe that the effects of these measurement errors may cancel out such that the estimates of Bush are unbiased. Accurate data are required in order to examine this possibility Bush used, however, available and public data in his study. Therefore, we recognize the limitations of the data in the Bush study and assign the study an appropriate weight while considering other evidence on the record.

334. Hausman offers as evidence regressions that show significant correlation between the prices of advertising on various media [736] Hausman's analysis consists of regressing the price of advertising on radio on a set of variables that include the price of advertising on two other media (broadcast TV and newspapers) and various measures of ownership concentration in a market. He reports no significant positive relationship between radio ad pricing and concentration, but does find significant correlation between the prices of radio advertising on the price of advertising on other media. We are reluctant, however, to conclude that this correlation implies strong substitution in the advertising market. First, Hausman's regressions omit important variables that may result in bias.[737] Second, the data used for Professor Hausman's study were not made available in the record of this proceeding. As a result, neither the Commission nor other interested parties have had an opportunity to perform independent analysis of the data to either confirm or refute Professor Hausman's conclusions. Third, Hausman studies the substitution between radio and other forms of media using a simple linear regression model, rather than a

[732] *See* Fox Comments, Appendix C, Economist Incorporated; Clear Channel Comments, Hausman Statement at 11-18. *See* Appendix E for a more complete summary of the criticisms by Professor Hausman and Dr. Owen and our response

[733] SQAD, Inc. is an independent media research company that produces measures of the costs of purchasing advertising spots on radio and TV

[734] Clear Channel Comments, Hausman Statement at 17 (Professor Hausman's statement is part of Clear Channel's filing, which advocates relaxation or elimination of radio ownership rules in local markets.)

[735] Measurement errors due to use of SQAD data are discussed more fully in Appendix E.

[736] *See* Clear Channel October 15, 2002, Ex Parte, Hausman Statement, Table 3 at 17.

[737] *See* Clear Channel Comments, Hausman Statement at Table 3. Usually, when econometricians estimate equations with the price of a good as a dependant variable, such as a demand or supply equation, the quantity or income generated by that good is included as an independent variable. Hausman includes neither the quantity nor income in his regressions. Omission of such a key variable often leads to bias in the coefficients of the included independent variables *See* Peter A Kennedy, A GUIDE TO ECONOMETRICS, (3rd ed 1992) at 91

simultaneous equation model [738]

335 Further, other empirical studies confirm our conclusion that advertisers do not view ads in newspapers and broadcast TV as substitutes. Silk, Klein, and Berndt examine advertising substitution among eight media in the national markets. [739] They report only weak substitution between newspapers and spot TV; they also report that advertising on network TV and newspapers are complements, not substitutes. Busterna estimates demand functions in five media (including network and spot television) and concludes that "cross-elasticity of demand between newspapers and other media is consistently nil across all media "[740] Reid and King conduct a study based on interviewing and surveying advertising managers in national markets and conclude that these managers did not view television and newspapers to be good substitutes for advertising [741] Finally, the Department of Justice and several federal courts have concluded that the local newspaper market is distinct from the local broadcast market.[742]

336 Although the studies discussed in the paragraph above focus on national advertising markets, not local ones, the results likely extend to local markets We see no evidence that local advertisers would more easily substitute between TV and newspapers than national advertisers. Indeed, evidence suggests that local advertisers are less likely to substitute among media than national advertisers. For example, classified ads, an important component of local advertising, comprising 40% of newspaper advertising revenues, offer affordable local advertising that is not available on broadcast TV.[743] In addition, newspapers provide unique features (*e g* , coupons to be redeemed with local retailers) that are not available through broadcast TV or radio [744] We believe, therefore, that findings of weak substitution between newspapers and broadcast TV for national advertisers likely apply to local buyers as well.

337 Indeed, Cox states that aggregate advertising prices in markets with grandfathered media combinations are consistent with prices in other markets after adjusting for market size [745] Gannett states that the combined local measurable advertising market revenue share of a newspaper and television

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[738] Systems of equations, such as a group of demand equations, allow more efficient estimation than regressing one equation, especially when economic theory is employed to constrain estimates across equations. By efficient, we mean here that the uncertainty of the parameter estimates, given the underlying data, is reduced. *See*, e g , Silk, Klein, and Berndt, *supra* note 522, and MOWG Study No 10. For more discussion on estimating systems of equations, *see* William Greene, ECONOMETRIC ANALYSIS (1990) at 509-542.

[739] Silk, Klein, and Berndt, *supra*

[740] John C Busterna, *The Cross-Elasticity of Demand for National Newspaper Advertising*, 64 J Q 349 (Summer/ Autumn 1987)

[741] Reid and King, *supra* note 523 at 292-307

[742] *Supra* note 728.

[743] Newspaper Association of America website (*http //www naa org*). The NAA estimates that 48% of local newspaper advertising dollars are allocated to classified ads, which have no good substitutes on television or radio media. NAA Comments at 55-65

[744] Cox asserts that advertisers place ads in television, radio and newspapers for different reasons *See* Cox Comments at 16-21

[745] *Id* at 16-21 (citing the Media Market Guide published by SQAD, Inc.)

station it now owns in Phoenix, Arizona, was nearly the same prior to 1999, when the properties came under common ownership, as it is now [746] Further, the synergies and cost reductions of joint-ownership may translate into increased, rather than decreased competition within each service. Media General provides a number of case studies that suggest increased services and reduced costs through newspaper and broadcast TV partnerships [747] By precluding the efficiencies inherent in combinations, the rule likely harms consumers by limiting the development of new, innovative media services that would flow from a more efficient, combined entity.[748]

338. A number of commenters believe the rule is necessary to protect advertisers that substitute between newspapers and broadcast TV. UCC argues that cross-media consolidation will likely harm advertisers in local markets. It concludes that consumers will have to pay more for products in a market with commonly owned newspapers and broadcast stations because advertisers will have to pay more to advertise and these increased costs will be passed on to consumers.[749] Others, such as Caribbean International News Corp , assert that in markets where there are newspaper/broadcast combinations, the commonly owned firms aggressively market multimedia advertising packages, creating a competitive imbalance.[750] CFA contends that a review of the literature on vertical and conglomerate mergers identifies major concerns about such mergers in concentrated markets where dominant players can employ a range of anticompetitive tactics (e.g., raising entry barriers, cross-subsidization, price squeezing, price discrimination, market foreclosure and exclusive deals) to thwart competition.[751]

339. Although the overall evidence appears to suggest little substitution between newspapers, broadcast TV, and radio, we agree that there may be a small group of advertisers that benefit from using various media to advertise their products. These advertisers could be harmed if owners of newspaper/broadcast combinations can identify this group and price discriminate -- charge higher prices to this group than they charge to other advertisers for the same product.[752] As explained above, however,

[746] Gannett Comments at 14-16 and Exhibit B Schurz Communications, Inc. similarly argues that two grandfathered combinations in South Bend, Indiana, have not caused the percentage of local advertising dollars spent with newspapers, television and/or radio stations to differ from that spent by national advertisers Schurz Comments at 8-10

[747] Media General Comments, Appendix 3, Statement of James K. Gentry.

[748] NAB Comments at 63-65, 101 *See also* Belo Comments at 1-8 (claiming its Dallas-Fort Worth combination has increased synergies and economies of scale that benefit the public), Cox Comments at 70 (claiming co- ownership benefits the operation of local media markets).

[749] *See* UCC Comments at 11-13

[750] Caribbean Comments at 27-35 Caribbean reports that such cross-ownership has created a situation where one owner (with two daily newspapers) garners 43% of the advertising revenues for traditional media outlets in Puerto Rico.

[751] CFA Comments at 96-121; *see also* Mid-West Comments at 5-6; UCC Comments at 13.

[752] *DOJ/FTC Merger Guidelines* § 1.12 explains "Existing buyers sometimes will differ significantly in their likelihood of switching to other products in response to a small but significant and non-transitory price increase. If a hypothetical monopolist can identify and price differently to those buyers ("targeted buyers") who would not defeat the targeted price increase by substituting to other products in response to a 'small but significant and nontransitory' price increase for the relevant product, then a hypothetical monopolist would profitably impose a discriminatory price increase on sales to targeted buyers. This is true regardless of whether a general increase in (continued ...)

the Commission is not charged with protecting competition in the advertising markets. These advertisers, however, are not without remedy. The Department of Justice, the Federal Trade Commission, as well as state attorney generals, review mergers generally and are concerned about the effects in the advertising market Further, both federal and state antitrust laws allow private suits to be brought. The Commission's interest in advertising markets extends only so far as issues relating to advertisers might affect the ability of FCC licensees to serve the public interest, convenience, and necessity. Since we see no potential harm to broadcasters, television viewers or radio listeners, the concern raised regarding harm to an ill-defined subset of advertisers does not justify retaining the rule.[753]

340. In any event, even if we were to focus exclusively on the advertising markets alone, the potential for harm to advertisers who substitute between various media outlets would be greatest if one entity owned all the newspapers and all the broadcast facilities. Through the constraining effect of our local radio and TV ownership rules, we expect that the majority of the potential newspaper/broadcast combinations would continue to face competition from separately owned media outlets in the local market.

341 Finally, consumers experience print and electronic media in very different ways.[754] Electronic media can provide real-time information concerning current events, sporting contests, or other time sensitive matters Electronic media also can be experienced more passively, as users may engage in other activities simultaneously while enjoying television or radio programming. Print media, on the other hand, require a higher degree of engagement by the consumer, but they also are capable of delivering greater depth of coverage. These differences are significant from a competitive standpoint both for consumers and, as described above, for advertisers. For consumers this means that the programming or content is different between newspapers and broadcast TV. Advertisers will view newspapers and TV broadcast as imperfect substitutes. A newspaper-broadcast combination, therefore, cannot adversely affect competition in any relevant product market Accordingly, we cannot conclude that the current newspaper-broadcast cross-ownership rule is necessary to promote competition.

b. Localism

342. The record indicates that the newspaper/broadcast cross-ownership prohibition is not necessary to promote broadcasters' provision of local news and information programming. Indeed, evidence suggests that the rule actually works to inhibit such programming. One of the strengths of daily newspapers is their ability to provide in-depth coverage of local news and events.[755] Many newspapers provide local content that far exceeds that provided by local broadcast outlets. Newspapers and broadcast stations – particularly television stations -- continue to be the dominant sources, in terms of consumer use,

(Continued from previous page)
price would cause such significant substitution that the price increase would not be profitable."

[753] There is nothing in the record regarding the number of advertisers that may be targeted for such price discrimination, nor the magnitude of the potential price increases. We believe, however, that the number of advertisers that may be potential targets of price discrimination would be very small for most newspaper/broadcast combinations

[754] For a summary table that compares the characteristics of print with electronic media, see David W Stewart and Scott Ward, *Media Effects on Advertising,* MEDIA EFFECTS: ADVANCES IN THEORY AND RESEARCH (1994) at 328.

[755] *E g* , Tribune Comments in MM Docket No 01-235 at 43-52 (core mission of daily newspapers is to provide local news).

for news and information to local communities.[756] Our rules should promote the ability of newspapers, television stations, and all other sources of local news and information to serve their communities.

343 Although the Commission does not regulate quality of programming, and, indeed, such regulation of content would raise significant First Amendment concerns, we have historically sought to promote the ability of local stations to serve their communities through news and public affairs programming Our MOWG studies suggest a direct correlation between the association of a broadcast outlet with a published daily newspaper and the quality of the local broadcast news. In MOWG Study No 7, "The Measurement of Local Television News and Public Affairs Programs," the authors found that television broadcast stations affiliated with a major broadcast television network that are "co-owned with newspapers experience noticeably greater success [in terms of] quality and quantity of local news programming than other network affiliates "[757] Co-ownership, the authors explain, refers to a company that owns at least one television station and one daily newspaper; the two need not necessarily serve the same market [758] Accordingly, while eliminating the rule may not be essential to achieve the efficiencies of common ownership -- because the rule prohibits only ownership of newspapers and broadcast stations serving the same market -- the breadth and depth of news coverage can be enhanced by collocation and the rule's elimination will increase the opportunities to realize these benefits by permitting combinations in areas where the rule currently prohibits them.

344. Specifically, MOWG Study No. 7 found that while non-network owned but network-affiliated stations provide, on average, 14.9 hours per week of local news and public affairs programming, newspaper-owned affiliated stations provide almost 50% more such programming, averaging 21.9 hours per week.[759] In addition, the study found that the average number of hours of local news and public affairs programming provided by the same-market cross-owned television-newspaper combinations was 25.6 hours per week, compared to 16.3 hours per week for the sample of television stations owned by a newspaper that is not in the same market as the station.[760] Not only do newspaper-owned stations provide more news and public affairs programming, they also appear to provide higher-quality programming, on average, at least as measured by ratings and industry awards. The ratings for newspaper-owned stations' 5 30 and 6 00 pm newscasts during the November 2000 sweeps period averaged 8 compared to an average rating of 6.2 for non-newspaper-affiliated stations.[761] More dramatically, newspaper-owned stations received 319 percent of the national average per station Radio and Television News Directors Association ("RTNDA") awards, and 200 percent of the national average

[756] MOWG Studies No. 8, MOWG Study No 3, *Consumer Substitution Among Media* by Joel Waldfogel (Sept. 2002)("MOWG Study No 3"); *see also* AFL-CIO Comments at 34-36, AFTRA Comments at 26-28, Comments of CWA at 5-9

[757] MOWG Study No 7, *The Measurement of Local Television News and Public Affairs Programs*, by Thomas C Spavins, Loretta Denison, Jane Frenette and Scott Roberts (Sept 2002) at 1 ("MOWG Study No. 7")

[758] *Id* at 3, note 1

[759] *Id.* at 3

[760] This information was derived from an examination of the data included in the appendices of MOWG Study No 7, as well as information in the record of this proceeding regarding the same market television/newspaper combinations *See* NAA Comments at 14-15.

[761] *Id*

A I. DuPont Awards (in association with the School of Journalism of Columbia University) in 2000-2001.[762] During that same period, non-newspaper-owned stations received RTNDA Awards at a rate of only 22 percent of the national average.[763] They received DuPont Awards at a rate of 39 percent of the national average per station[764] The authors conclude that, "within the overall category of network affiliates, there appears to be a systematic divergence between stations that are co-owned with a newspaper publisher relative to all other affiliates. For each quality and quantity measure in our analysis, the newspaper network-affiliated stations exceed the performance of other, non-newspaper-owned network affiliates."[765]

345. These conclusions are supported by a study done by the Project for Excellence in Journalism ("PEJ") in which PEJ analyzed five years of data on ownership and news quality. PEJ concluded that cross-owned stations in the same Nielsen Designated Market Area were more than twice as likely to receive an "A" grade as were other stations.[766] On the whole, cross-owned stations were more likely to do stories focusing on important community issues and to provide a wide mix of opinions, and they were less likely to do celebrity and human-interest features.[767]

346 The benefits of combined ownership are not likely to be achieved through joint ventures as opposed to combined ownership. Besen and O'Brien present a persuasive theoretical argument that the efficiencies of joint ownership of newspaper and television will likely exceed the efficiencies of joint ventures between the two.[768] The authors argue that joint ventures confront three classes of issues that hinder their ability to achieve efficient joint production: (1) the costs of reaching the agreement; (2) incentives to withhold private information, and (3) incentives to take actions that are not in the best interests of the joint venture Besen and O'Brien maintain that joint ownership mitigates these possible hindrances. The prospective benefit of some media consolidation in the form of non-trivial efficiencies – and, conversely, the opportunity cost from the loss of such benefits through a rule prohibiting certain combinations – weigh against retention of our newspaper/broadcast cross-ownership rule The authors provide no estimate of the value of these benefits

347. Many commenters illustrate how combining a newspaper's local news-gathering resources

[762] *Id* at 4

[763] *Id*

[764] *Id* While there is controversy in the record about some aspects of this study, no commenter has critiqued the newspaper-related evidence.

[765] *Id*

[766] Project for Excellence in Journalism, *Does Ownership Matter in Local Television News: A Five-Year Study of Ownership and Quality* (Feb. 17, 2003) at 10 ("PEJ Study") Elsewhere in this *Report and Order*, we determine that the results of the PEJ study are statistically insignificant and cannot be considered reliable or convincing evidence *See* National TV Ownership Rule Section VII(A), *infra*. We use PEJ's filing here solely as a source of anecdotal evidence, not as a statistical study, and do not base our conclusions regarding the newspaper/broadcast cross-ownership rule upon it.

[767] *Id*

[768] Gannett Comments in MM Docket No 01-235, Exhibit C, Besen and O'Brien, *An Economic Analysis of the Efficiency Benefits from Newspaper/Broadcast Station Cross-Ownership*.

with a broadcast platform contributes to, rather than detracts from, the production of local news programming that serves the community. These results follow from the particular journalistic experience associated with local daily newspapers, as well as the tangible economic efficiencies, such as sharing of technical support staff, which can be realized through common ownership of two media outlets. Such efficiencies may increase the amount of diverse, competitive news and local information available to the public, and allow the combined entities to compete more effectively in an increasingly fragmented and competitive market.[769]

348. There are several anecdotes in the record that illustrate how efficiencies resulting from cross-ownership translate into better local service. These efficiencies are particularly important as consumers demand almost instantaneous delivery of news – both locally and nationally – and even more in-depth coverage of complex issues.[770] Gannett, which owns a newspaper/television combination in Phoenix, Arizona,[771] reports that the quantity and diversity of area news coverage it provides has increased as a result of its ability to leverage the combined resources of the two outlets. According to Gannett, media integration has improved efficiency, particularly in situations characterized by fast-breaking news such as the massive wildfires near Phoenix last year, while the journalists at each outlet retain discretion and exercise independent judgment.[772] Similarly, in Dallas, Texas, where Belo owns a newspaper/television combination,[773] both outlets have been able to cover a wider range of stories through information sharing between the separate newspaper and television news staffs.[774] Belo also operates TXCN, a 24-hour local cable news network, which uses its own news-gathering sources as well as those of Belo's other media properties in the market This aggregation of news gathering and production resources, Belo asserts, has allowed it to provide more content, to innovate more in its

[769] *See* The Times Comments in MM Docket No. 01-235 at 7-10, Ex 3 (efficiencies in the Times' grandfathered combination reduce costs for, *e.g* , training and employee benefits, which reduces pressure on advertising rates and frees up resources for programming efforts), *see also* ALTV Comments in MM Docket No 01-235 at 7-8; Hearst Comments in MM Docket No 01-235 at 16-18.

[770] *Compare* Edwin Emery & Michael Emery, THE PRESS AND AM (5th ed 1984) at 82 (reporting that it took six weeks for the news of the fighting at Lexington and Concord to reach Savannah, Georgia) Coverage of news events in the early press also tended to be brief, sometimes painfully so. One cannot but feel for the citizens of Philadelphia, for example, who were afforded only 43 words by the *Freeman's Journal* conveying the entire account of the final battle of the revolutionary war "Be it remembered that on the 17th day of October, 1781, Lieut Gen Charles Earl Cornwallis, with about 5,000 British troops, surrendered themselves prisoners of war to His Excellency, Gen. George Washington, Commander-in-Chief of the allied forces of France and America " *See* Emery & Emery, THE PRESS AND AM at 83 (citing Laurence Greene, AM. GOES TO PRESS (1936)).

[771] Gannett holds this combination pursuant to the retention period formula we instituted when we originally adopted the rule *See 1975 Multiple Ownership Second Report and Order,* 50 F C.C.2d at 1076 n 25.

[772] Gannett Comments at 8-11, Ex. A, Gannett Comments at 4-8, 18 (citing MOWG Study No. 7) and Exh. A (an affidavit from two local managers explaining the working relationships between commonly owned newspapers and broadcast stations in Phoenix, Arizona)

[773] This combination was "grandfathered" at the time of the rule's adoption.

[774] Belo Comments in MM Docket No 01-235 at 4-7

reporting, and to provide more in-depth coverage of locally important issues than it otherwise could.[775]

349. Efficiencies not involving the sharing of news staffs may also be realized through cross-ownership For example, Gannett explains that, if the restriction on newspaper/broadcast cross-ownership were removed, combinations could share back office expenses, such as accounting, marketing, and human resource functions.[776] Further, once a story has been assembled, the cost of distribution for another use is minimal, but the gains from incremental additional distribution can be large. This differential increases, rather than reduces, the incentives to create and expand the product sold -- in this case information.[777] As Cox argues, combinations at the local level result in efficiencies that allow media companies to serve their localities better and increase investment in local programming.[778]

350. Although our conclusions pertain to markets of all sizes, newspaper-broadcast combinations may produce tangible public benefits in smaller markets in particular. In this regard, West Virginia Media contends that the cross-ownership restriction impairs coverage of local news and public affairs in small markets by prohibiting combinations that would produce efficiencies and synergies particularly necessary in smaller markets.[779] It argues that the rule may have the unintended effect of stifling local news by prohibiting efficient combinations that would produce better output.[780] We assume that the efficiencies cited by West Virginia Media can benefit small businesses with respect to the production of news and public affairs programming.[781]

351 We disagree with those who argue that the relaxation or elimination of the newspaper/broadcast cross-ownership rule will create additional pressures on local news editors and directors to curtail coverage of public interest news.[782] For example, according to AFL-CIO, CanWest,

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[775] *Id. See also* NAA Comments in MM Docket No. 01-235 at 23-24, 29-30, 34 (co-owned broadcast stations and newspapers have won multiple awards for their reporting), Bonneville Comments in MM Docket No 01-235 at 5-6 (joint operation will result in better content and greater public service); Morris Comments in MM Docket No. 01-235 at 6-12 (co-owned outlets provide superior service); NAB Comments in MM Docket No 01-235 at 34-43 (combinations are beneficial because, as operations in both entities are strengthened, they can provide better and more innovative media services)

[776] Gannett Comments in MM Docket No 01-235 at 13-14

[777] *Id* at 16-19, Exhibit C, *see also* NAA Comments in MM Docket No. 01-235 at 16-22

[778] Cox Comments at 73-74 (citing, *e g*, Schurz Comments in MM Docket No 01-235 at 8, Gannett Comments in MM Docket No 01-235 at 7).

[779] West Virginia Media Comments in MM Docket No 01-235 at 7 (*citing* Bond & Pecaro, Inc, *A Study to Determine Certain Economic Implications of Broadcasting/Newspaper Cross-Ownership* (July 21, 1998) at 1), Bonneville Comments at 7-8.

[780] West Virginia Media Comments at 1-14 (citing Bond & Pecaro, Inc., *supra*); NAB Comments in MM Dkt. No 98-35 at Appendix B , *see also* Media General Comments at 71-75.

[781] In the Grandfathering and Transition Procedures Section VI(D), below, we adopt special provisions with respect to small businesses to further assist them

[782] AFL-CIO Comments in MM Docket No 01-235 at 8-14 (citing Kunkel and Roberts, *Leaving Readers Behind· The Age of Corporate Newspapering,* 23(4) AM J. R (May 1, 2001)); Consumers Union Comments in MM Docket No 01-235 at 52-58, Mid-West Comments in MM Docket No. 01-235 at 3; AFL-CIO Comments at 44-46; NAHJ (continued)

whose daily newspapers comprise 30% of Canada's daily newspaper circulation, requires its big city newspapers to publish weekly editorials that are written by, and issued from, headquarters, and does not permit unsigned local editorials to contradict the headquarters editorials [783]

352. As an initial matter, the issue raised by AFL-CIO regarding CanWest does not address cross-ownership within a market but, instead, addresses the perceived problems of national ownership and corporate centralization. Since our cross-ownership rule is not intended to address such problems, we need not address this argument Moreover, it is hardly surprising, nor do we find it troubling, that newspaper owners use their media properties to express or advocate a viewpoint. To the contrary, since the beginning of the Republic, media outlets have been used by their owners to give voice to, among others, opinions unpopular or revolutionary,[784] to advocate particular positions,[785] or to defend, sometimes stridently, social or governmental institutions.[786] Our broadcast ownership rules may not and should not discourage such activity. Nor is it particularly troubling that media properties do not always, or even frequently, avail themselves to others who may hold contrary opinions. Nothing requires them to do

(Continued from previous page)
Comments at 16-17

[783] AFL-CIO Comments at 44-46

[784] Concerning the role of spokespersons in the media in the American Revolution, *see* Philip Davidson, PROPAGANDA & THE AMERICAN REVOLUTION (UNC Press, 1941), in the abolitionist movement, *see* Edwin & Michael Emery, THE PRESS & AMERICA. AN INTERPRETIVE HISTORY OF THE MASS MEDIA (Prentice Hall 1992) at 121-27 ("Emery & Emery"); in the "muck-raking" movement, *see* Ron Chernow, TITAN: THE LIFE OF JOHN D. ROCKEFELLER, SR. (Random House 1998) at 116-17, 435-53; in the rural populist movement, *see* Howard Zinn, A PEOPLE'S HISTORY OF THE UNITED STATES 1492 – PRESENT (Harper Collins 2003) at 292 ("Zinn"), in the labor movement, *see The Labor Press Project*, http://faculty washington.edu/gregoryj/laborpress/ (visited May 21, 2003); in the prohibition movement, *see* John Kobler, ARDENT SPIRITS. THE RISE AND FALL OF PROHIBITION (G P Putnam's Sons, 1973) at 42-47, 55-57, 98-101, 138-40, 153, 155, 158, 183, in the post-World War II conservative movement, *see* George H. Nash, THE CONSERVATIVE INTELLECTUAL MOVEMENT IN AMERICA SINCE 1945 (Basic Books 1976) at 148-60, and Rick Perlstein, BEFORE THE STORM BARRY GOLDWATER & THE UNMAKING OF THE AMERICAN CONSENSUS (Hill & Wang 2001) at 114; in the counterculture and anti-Vietnam War movements of the 1960s and 1970s, *see* Ellen Frankfort, THE VOICE· LIFE AT THE VILLAGE VOICE (Morrow 1976), Kevin McAuliffe, THE GREAT AMERICAN NEWSPAPER· THE RISE & FALL OF THE VILLAGE VOICE (Charles Scribner's Sons, 1978); and Zinn, at 494, and in contemporary protest movements, *see* Greg Ruggiero & Stuart Sahulka (Eds), THE PROGRESSIVE GUIDE TO ALTERNATIVE MEDIA & ACTIVISM (Seven Stories Press 1999); *see also* Ward L Miner, WILLIAM GODDARD, NEWSPAPER-MAN (Duke U Press 1962); Arthur Schlesinger, PRELUDE TO INDEPENDENCE, THE NEWSPAPER WAR ON BRITAIN, 1764-1776 (Knopf 1958); Walett, MASSACHUSETTS NEWSPAPERS AND THE REVOLUTIONARY CRISIS, *1763-1776* (Boston, MA Bicentennial Comm , 1974)

[785] Catherine D Bowen, JOHN ADAMS AND THE AMERICAN REVOLUTION (Little Brown 1950); Milton Flower, John Dickinson, CONSERVATIVE REVOLUTIONARY (UVA Press, 1983); Robert Middlekauff, THE GLORIOUS CAUSE: THE AMERICAN REVOLUTION, 1763-1789 (Oxford U. Press, 1982), Clinton Rossiter, POLITICAL THOUGHT OF THE AMERICAN REVOLUTION (Harcourt Brace Jovanovich 1963), Maurice R. Cullen, Jr., *Benjamin Edes Scourge of Tories*, J Q (Summer 1974) at 214.

[786] Edwin & Emery, *supra* at 42-44 (concerning Tory newspaper publisher James Rivington). Other newspaper editors who championed causes passionately include William Randolph Hearst concerning many causes (*see* David Nasaw, THE CHIEF· THE LIFE OF WILLIAM RANDOLPH HEARST (Houghton Mifflin 2001)) and the late Katherine Graham of the Washington Post concerning the Watergate scandal (*see* Carl Bernstein & Bob Woodward, ALL THE PRESIDENT'S MEN (Touchstone/Simon & Schuster, New York, 1974)).

so,[787] nor is it necessarily healthy for public debate to pretend as though all ideas are of equal value entitled to equal airing. The media are not common carriers of speech.[788] It is hardly an indictment of the media to point out that an outlet may be a proponent of an identifiable editorial viewpoint. And the fact that such viewpoints may reflect popular opinion or have widespread appeal is not a ground for government intervention in the marketplace of ideas Indeed, the very notion of a marketplace of ideas presupposes that some ideas will attract a following and achieve wide currency, while others quietly recede having failed to conquer the hearts and minds of the citizenry. Our Constitution forbids government action to pre-select the winners in this competition or to guarantee the circulation of any particular set of ideas.

353. Nor is it troubling that media properties may allow their news and editorial decisions to be driven by "the bottom line "[789] Again, the need and desire to produce revenue, to control costs, to survive and thrive in the marketplace is a time honored tradition in the American media. Indeed, it was not until newspaper publishers learned to market their papers as tools of commerce that the press became a force in the public debate that lead to the framing of our Constitution.[790] Impair the ability of media outlets to profit and you choke off the capital to which their tap roots reach; strangle the press and the balance of our familiar rights and privileges wither and fall.

354. In short, to assert that cross-owned properties will be engaged in profit maximizing behavior or that they will provide an outlet for viewpoints reflective of their owner's interests is merely to state truisms, neither of which warrants government intrusion into precious territory bounded off by the First Amendment. To the contrary, we are engaged in this exercise precisely because we seek to encourage the airing of diverse and antagonistic viewpoints It would be odd indeed if our rules were structured to inhibit the expression of viewpoints or to promote only an accepted set of ideas. In light of the overwhelming evidence that combinations can promote the public interest by producing more and better overall local news coverage, we conclude that the current rule is not necessary to promote our localism goal and that it, in fact, is likely to hinder its attainment.

[787] *See Miami Herald Publishing Co v Tornillo*, 418 U S. 241 (1974). Broadcasters, however, are subject to certain statutory political broadcasting requirements *See* 47 U S C § 312(a)(7) (broadcast and DBS licensees must make available "reasonable access" to all legally qualified candidates for federal elective office), 47 U.S.C. § 315 ("equal opportunities" to competing legally qualified candidates) The Bipartisan Campaign Reform Act of 2002 contains several content-related provisions applicable to certain FCC regulatees. This Act is now being challenged before a special three Judge panel of the United States District Court for the District of Columbia *McConnell v FEC*, Civ. No. 02-0582 (D D C 2003)

[788] *See, e g*, 47 U S C. § 153(10) ("a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier").

[789] *See* CFA Comments at 255 (citing Cranberg, Gilbert, Randal Bezanson, John Soloski, TAKING STOCK: JOURNALISM AND THE PUBLICLY TRADED NEWSPAPER COMPANY, (Ames. Iowa State, 2001) at 89; and *The Business of News, the News About Business,* Neiman Reports, Summer 1999). It appears that by "[feeling] pressure from the bottom line," CFA means that editors are spending less time on the news and more of their time is being taken up with business concerns such as "plotting marketing strategies or cost-cutting campaigns " *Id.*

[790] Edwin and Michael Emery, THE PRESS AND AMERICA (5th Ed 1984) 51-72.

c. Diversity

355 The Commission adopted the newspaper/broadcast cross-ownership rule because it believed that diversification of ownership would promote diversification of viewpoint.[791] This proposition has been both defended and called into question The Supreme Court found that the newspaper/broadcast cross-ownership rule could be sustained "so long as the regulations are not an unreasonable means for seeking to achieve these [public interest] goals."[792] Against the backdrop of the last 27 years' growth in the number, breadth, and scope of informational and entertainment media available and the benefits that may accrue from common ownership, we conclude that a blanket prohibition on the common ownership of broadcast stations and daily newspapers in all communities and in all circumstances can no longer be justified as necessary to achieve and protect diversity. Although we continue to believe that diversity of ownership can advance our goal of diversity of viewpoint, the local rules that we are adopting herein will sufficiently protect diversity of viewpoint while permitting efficiencies that can ultimately improve the quality and quantity of news and informational programming. Accordingly, we will eliminate the newspaper/broadcast cross-ownership prohibition and consider any such proposed merger in light of our new rules.

356. *Benefits of Common-Ownership* As discussed above in connection with localism, the record indicates that cross-ownership of newspapers and broadcast outlets creates efficiencies and synergies that enhance the quality and viability of media outlets, thus enhancing the flow of news and information to the public.[793] Cox argues that co-ownership increases source diversity because it enables broadcasters to enhance their delivery of local programming, news, and information.[794] Others assert that the various synergies and profitable ventures between TV broadcasts and newspapers suggest that relaxing the newspaper cross-ownership rule could conceivably help struggling newspapers in some markets and perhaps provide economic justification for creation of newspapers.[795] Thus, relaxing the cross-ownership rule could lead to an increase in the number of newspapers in some markets and foster the development of important new sources of local news and information.[796]

[791] *1975 Multiple Ownership Second Report and Order*, *supra* note 33

[792] *NCCB*, 436 U S at 796.

[793] *See, e g* , News Corp. Comments in MM Docket No. 01-235 at 35-37 (since waiver of the rule in 1993, News Corp has sustained the continued publication and expansion of the *New York Post*), BIC Comments in MM Docket No 01-235 at 5-6 (broadcasters must grow and consolidate in order to survive and effectively serve the public); Norwell Comments in MM Docket No 01-235 at 5-6 (economies of scale of combining a broadcast station and a daily newspaper are driven by marketplace realities of competing for limited advertising dollars); Can West Comments at 6 (print journalists can reach a wider audience over TV); Cox Comments at 71-72; of NAA Comments at 11-20 (co-owned affiliates offer superior news and informational content over non-co-owned affiliates).

[794] Cox does not address program diversity because it believes that program diversity is irrelevant to newspapers since they do not offer programming Cox Comments at 71-72.

[795] Bear Stearns Comments at 40.

[796] Media General Comments at 13-21 (arguing that its convergence model has enabled it to deliver better, faster, and deeper local news in Tampa, Florida; Roanoke/TriCities, Virginia, Florence, South Carolina, Columbus, Ohio; and Panama City, Florida)

357. Evidence that common ownership can enhance the flow of news and information to the public can be found in grandfathered newspaper-television combinations of which there are 21 Our review of the record indicates that such combinations often serve the public interest by adding information outlets and creating high quality news product. A recent study, for example, determined that, on average "grandfathered" newspaper-owned television stations, during earlier news day parts, led the market and delivered 43% more audience share than the second ranked station in the market and 193% more audience than the third ranked station in the market. These "grandfathered" structures also have created new information outlets in their market, such as Internet sites and local news-oriented cable networks.[797]

358. Moreover, empirical research confirms that newspaper/television combinations frequently do a superior job of providing news and informational programming MOWG Study No. 7 found that network affiliated TV stations that are co-owned with a newspaper "experience noticeably greater success under our measures of quality and quantity of local news programming than other network affiliates."[798] Similarly, as described above, the Project for Excellence in Journalism's five-year study on local television news found "[s]tations with [newspaper] cross-ownership . . . were more than twice as likely as stations overall to generate "A" quality newscasts."[799] None of the cross-owned stations in the sample received an "F" grade in quality, as compared with 8% of all other stations.[800] It appears that the synergies and efficiencies that can be achieved by commonly located newspaper/broadcast combinations can and do lead to the production of more and qualitatively better news programming and the presentation of diverse viewpoints, as measured by third-parties.[801]

359 *Harm to Diversity Caused by the Rule* The newspaper/broadcast cross-ownership rule, as noted above, may be preventing efficient combinations that would allow for the production of high quality news coverage and broadcast programming, including coverage of local issues, thereby harming diversity [802] Newspapers and local over-the-air television broadcasters alike have suffered audience

[797] Miller Comments in MM Docket No 01-235 at 24-28, Ex. 8 The Miller study looked at only a few of the cross-owned newspaper/broadcast combinations, not all of them Some commenters discount the importance of these new voices claiming that commonly-owned outlets do not contribute to viewpoint diversity We address these arguments in the *Common Ownership/Common Viewpoint* section, *infra*

[798] MOWG Study No 7 at 2.

[799] PEJ Study, *supra* note 769 at 4, 10

[800] *Id.* at 10.

[801] We recognize that quality can be subjective However, both MOWG Study No 7 and the PEJ Study attempted to use objective measurements of quality. In the case of the former, the number of Radio and Television News Directors Awards and A I DuPont Awards was measured In the latter, a Design Team of 14 respected local television news professionals from a diverse cross-section of companies and regions around the country was assembled This panel, through the use of survey questionnaires and long-form open-ended discussions developed 6 criteria for assessing the quality of newscasts including story balance via multiple sources and story balance via multiple viewpoints. Project for Excellence in Journalism, *"Does Ownership Matter in Local Television News. A Five-Year Study of Ownership and Quality"* (Feb. 17, 2003) at 2, 21 (Appendix III). *See also* PEJ's March 20, 2003, reply to Network's response

[802] FOEF Comments in MM Docket No 01-235 at 22, Table 1, and 29-31, Herald Reply Comments in MM Docket No 01-235 at 4-5.

declines in recent years.[803] In the broadcast area, commenters have reported declines in the ratings of existing outlets as more media enter the marketplace. For example, the number of television stations in the Miami-Ft Lauderdale and the adjacent West Palm Beach markets has increased from 10 to 25 from 1975 to 2001.[804] As more stations have begun to program local news, however, the ratings for individual stations have dropped.[805] Broadcast groups owned by GE, Disney, Gannett, Hearst-Argyle and Belo have lost 10 to 15% of their aggregate audience in the past five years.[806] Local over-the-air broadcast TV's share of total television advertising dollars, which includes the new broadcast networks, new cable networks and syndication providers, has fallen from 56% in 1975 to 44% in 2000.[807] E.W. Scripps Company argues that consolidation among established media outlets and the proliferation of new media outlets since 1975 requires broadcasters and newspapers to grow, consolidate, and achieve critical scale in their local markets to survive and effectively serve the public.[808]

360 Given the decline in newspaper readership and broadcast viewership/listenership, both newspaper and broadcast outlets may find that the efficiencies to be realized from common ownership will have a positive impact on their ability to provide news and coverage of local issues.[809] We must consider the impact of our rules on the strength of media outlets, particularly those that are primary sources of local news and information, as well as on the number of independently owned outlets. As West Virginia Media, states, for example, maximizing the number of independent voices does not further diversity if those voices lack the resources to create and publish news and public information [810]

361 *Common Ownership/Common Viewpoint* As suggested by MOWG Study No. 2,[811] authored by David Pritchard, commonly-owned newspapers and broadcast stations do not necessarily speak with a single, monolithic voice [812] Although limited in scope, the Pritchard study found that in half of the 10 newspaper-television combinations studied, the overall slant of the coverage of a company's television station was noticeably different from the overall slant[813] of the coverage provided by the same

[803] *Id* at 1-2, *see also* NAB Comments in MM Docket No. 01-235 at 9-16, Att 1 (audience share of traditional media has declined as the share of new outlets, particularly cable systems, DBS and MVPDs has increased)

[804] Tribune Comments in MM Docket No 01-235 at 25-26 Tribune publishes the *South Florida Sun-Sentinel*

[805] *Id* at 26-27

[806] Miller Comments in MM Docket No 01-235 at 19-21, Exhibits 5, 6.

[807] *Id* at 21-22, Exhibit 7.

[808] Scripps Comments in MM Docket No 01-235 at 2.

[809] *See* West Virginia Media Comments at 14-23, Bonneville Comments at 7; Cox Comments at 71-72; Dispatch Comments at 7-9, Stapleton Comments at 14-15

[810] West Virginia Media Comments in MM Docket No. 01-235 at 13-15.

[811] MOWG Study No. 2.

[812] Fox Comments at 54-55; NAB Comments at 62-63. *See also* Fox Comments in MM Docket No 01-235 at 20-23, Gannett Comments at 9-14; Morris Comments at 8-9, NAA Comments at 11-20; Tribune Comments in MM Docket No 01-235 at 42-47. Indeed, few broadcast stations overtly editorialize.

company's newspaper in the same market. While this does not permit us to conclude that common ownership never results in common slant, it does suggest that common ownership "does not result in a predictable pattern of news coverage and commentary about important political events in . . commonly owned outlets."[814] The results of the Prichard study are consistent with other anecdotal information supplied by commenters[815]

362 Several parties assert that ownership affects editorial decisions and, ultimately, viewpoints expressed by media outlets.[816] As evidence, CFA points to Kim Fridkin Kahn and Patrick J Kenny's paper, *The Slant of the News. How Editorial Endorsements Influence Campaign Coverage and Citizens' View of Candidates*,[817] which concludes that information on news pages is slanted in favor of the candidate endorsed on the newspaper's editorial page. CFA argues that combined entities are more likely to engage in biased reporting that goes unchecked by a disinterested rival. Issues affecting TV stations but not newspapers, it claims, might be discussed differently by independent newspapers and newspaper/TV combinations It argues that, due to excessive influence and conflicts of interest, cross-owned media fail repeatedly to exercise their "watchdog" function, as documented by experiences in a variety of communities.[818] Some opponents of elimination of the rule, arguing that common ownership will result in the common expression of viewpoint, attack the motives and objectivity of Dr. David Pritchard, author of MOWG Study No. 2[819] Dr. Dean Baker asserts that MOWG Study No. 2 has serious methodological flaws and that when the results are properly analyzed seven of the ten combinations had a common slant[820] CFA argues that "this is a remarkably high bias and underscores the problem of common ownership across the media."[821] Other critics of MOWG Study No 2 claim that its results cannot be generalized to all broadcast/newspaper combinations because the study examined only a small sample of cases and the author failed to include a "control" group of independently-owned broadcast

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[813] In MOWG Study No 2, Pritchard defines the "slant" of a published or broadcast item about the presidential campaign from the point of view of a hypothetical interested but undecided voter. If the coders judged an item to be likely to make such a voter more inclined to vote for a candidate, the item was coded as "favorable" to that candidate "Slant" was not a judgment about whether a candidate or his staff would have been happy with publication or broadcast of the item, about whether an item was somehow biased, or about a journalist's intent It was simply an assessment of whether an item would have made a typical undecided voter more likely to vote for a candidate

[814] MOWG Study No 2.

[815] *See* Tribune Comments in MM Docket No. 01-235 at 43, *see also* Gannett Comments in MM Docket No 01-235 at 11-13, Gannett Comments at 9-14, NAB Comments at 62-63 (*citing e g.*, Hicks and Featherston, Duplication of Newspaper Content at 551-53).

[816] *See* AFL-CIO Reply Comments in MM Docket No. 01-235 at 13-20; UCC Comments in MM Docket No 01-235 at 11

[817] *96(2) AMERICAN POLITICAL SCIENCE REVIEW (June 2002).*

[818] CFA Comments at 225-34

[819] *See, e g*, AFL-CIO Comments at 36-43; AFTRA Comments at 28-32, CFA Comments at 221-24, CWA Comments at 29-34

[820] AFL-CIO Comments, *Democracy Unhinged* at 5-7.

[821] CFA Comments at 47-48 n 68.

stations and newspapers for comparison.[822]

363. Various parties submit anecdotal evidence purporting to show that ownership either does or does not influence viewpoint. For example, in an effort to show that ownership does influence viewpoint, AFL-CIO reports that Pulitzer winner Sydney Schanberg's column in *The New York Times* was canceled when he criticized the press for ignoring a major real estate scandal in New York;[823] the publisher of Hearst's *San Francisco Examiner* allegedly promised to stem his paper's criticism of Mayor Willie Brown if the mayor did not oppose Hearst's takeover of its rival, the *Chronicle*;[824] and the *Los Angeles Times* failed to report a controversial real estate and recreational project that benefited the *Times'* parent, *Times-Mirror*, although the story was reported by other papers, including *The New York Times* and *The Bakersfield Californian*.[825] CWA argues that ownership influences viewpoint, and even reduces viewpoint diversity.[826] The record also includes anecdotes to the contrary, and those supplying these anecdotes are equally adamant that ownership does not influence viewpoint. For example, Tribune states that all of its newspapers did not endorse the same candidate in the 2000 presidential election.[827]

364 Suffice to say, although there is evidence to suggest that ownership influences viewpoint, the degree to which it does so cannot be established with any certitude. In order to sustain a blanket prohibition on cross-ownership, we would need, among other things, a high degree of confidence that cross-owned properties were likely to demonstrate uniform bias. The record does not support such a conclusion. Indeed, as the market becomes more fragmented and competitive, media owners face increasing pressure to differentiate their products, including by means of differing viewpoints. While such differentiation may occur, however, our analysis does not turn on that premise, and it is not determinative of our decision with respect to our current newspaper/broadcast cross-ownership rule. Our analysis turns, rather, on the availability of other news and informational outlets. Thus, while we do not dispute that a particular outlet may betray some bias, particularly in matters that may affect the private or pecuniary interest of its corporate parent (*e.g.*, such as when an outlet has an interest in a real estate transaction or is being criticized in an op-ed), such anecdotes do not show a pattern of bias in the vast majority of news comment and coverage where such self-interest is not implicated. Nor, moreover, do such incidents mean that the public was left uninformed about the situation by other available media. Therefore, it would seem that the remedy for any such "bias" is the provision of antagonistic viewpoint we seek to advance.

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[822] *See, e g , Democracy Unhinged*

[823] AFL-CIO Comments at 22 (citing Northwest Passage Productions in association with KTEH, *Fear and Favor in the Newsroom*)

[824] *Id.* (citing Thomas Kunkel and Gene Roberts, *Leaving Readers Behind The Age of Corporate Newspapering*, 23(4) AM J R 36 (May 1, 2001).

[825] *Id* (citing Ben Bagdikian, THE MEDIA MONOPOLY (6th ed) (Boston: Beacon Press 2000) at 39-41).

[826] CWA Comments at 29-40 (citing Marion Just and Rosalind Levine, *"News for Sale." Special Report. Local TV News*, COL J. REV /PEJ (Nov./Dec 2001) at 2-3; DeNeen L. Brown, *Canadian Publisher Raises Hackles: Family is Accused of Trying to Restrict Local Newspapers' Autonomy*, WASHINGTON POST (Jan 27, 2002) at A25), *see also* CFA Comments at 34-40, 225-34.

[827] Tribune Comments in MM Docket No 01-235 at 43. *See also* Gannett Comments in MM Docket No 01-235 at 11-13, Gannett Comments at 9-14.

365 *Available Media.* The record in this proceeding provides ample evidence that competing media outlets abound in markets of all sizes – each providing a platform for civic discourse [828] Television and radio stations, both commercial and noncommercial, are important media for news, information, entertainment, and political speech.[829] Cable television systems, which originated as passive conduits of broadcast programming, have expanded to carry national satellite-delivered networks Many also carry local public, educational, and governmental channels. Cable systems in larger markets are now evolving into platforms for original local news and public affairs programming.[830] Daily newspapers, while declining in number, continue to provide an important outlet for local and national news and expression.[831] The Internet, too, is becoming a commonly-used source for news, commentary, community affairs, and national/international information.[832] Seventy-two percent of Americans are now online and spend an average of nine hours weekly on the Internet.[833] MOWG Study No. 3 suggests that consumers generally view Internet news sources as a substitute for daily newspapers and broadcast news.[834] We cannot but conclude that, notwithstanding the claims of supporters of retention of the newspaper/broadcast rule,[835] the Internet does play an important role in the available media mix.[836]

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[828] *See* Media Marketplace Section IV, *supra, see also* MOWG Study No 1; MOWG Study No. 3 at 3, 18, MOWG Study No. 8 at Table 1, Appendix D, Gannett Comments at 9-14 (consumers use a variety of media to obtain news and information)

[829] Gannett Comments at 10-11 *See also* Andrea M.L Perrella, THE POLITICAL INFLUENCE OF TALK RADIO (Université de Montréal, 1995) ("Talk radio has grown .. from a fringe radio format to a lucrative industry and a noticeable actor in recent American politics Talk radio has played a vocal role during the 1992 presidential election and the 1994 mid-term elections, with many people both in and out of politics attributing the Republican Party's 1994 election sweep to buoyant conservative talk-radio hosts "), Amy Ridenour, *President of The National Center for Public Policy Research*, Press Release (Nov. 20, 2002) ("Talk radio is America's town hall") *But see* Consumers Union/MAP Reply Comments at 21-23 (claiming that radio stations are no longer a major voice in civic discourse).

[830] The first local/regional cable news channels began in the mid-1980s, today there are 32 cable news channels. *See* NCTA, *Regional Cable Networks*, Cable Developments (2002) at 171-94

[831] CFA Comments at 159-62

[832] *See, e g*, Media General Reply Comments in MM Docket No. 01-235 at 8-11 (Internet a surrogate for local newspapers with over half of the nation having access to the Internet) (citing, NTIA, *A Nation Online. How Americans are Expanding Their Use of the Internet* (Feb. 2002)); *see also* NAB Reply Comments in MM Docket No. 01-235 at 8-10, Hearst Comments in MM Docket No 01-235 at 10-11

[833] *See, e g*, Hearst Comments in MM Docket No 01-235 at 10-11.

[834] *See* MOWG Study No. 3 We recognize, however, that many television stations and newspapers also distribute their content via the Internet.

[835] UCC Comments in MM Docket No. 01-235 at 17-19, Att. 10 (Internet not effective news or advertising substitute for broadcast stations or daily newspapers); CU Comments in MM Docket No. 01-235 at 65-96 (diversity not assured by competition across media products), AFL-CIO Comments at 34-36 (arguing that more than 60% of Americans watch broadcast news, and about 62 percent of Americans read a daily newspaper, while other media do not have comparable reach, and half of all Americans do not have Internet connections at home); CWA Comments at 5-9, *citing* MOWG Studies Nos 3 and 8 (Internet not a mass medium and most people use Internet news sites for non-local news)

366 We disagree with parties that assert that there is little diversity in media markets.[837] The average American has a far richer and more varied range of media voices from which to choose today than at any time in history. Given the growth in available media outlets, the influence of any single viewpoint source is sharply attenuated. AFL-CIO argues to the contrary, asserting that the growth rate of media outlets is slowing.[838] The slowing of the growth rate is attributable, at least in part however, to the lack of available spectrum to maintain the tremendous growth in broadcast outlets recently experienced. CFA argues that only a large number of independent owners – "diverse and antagonistic sources" – will provide sufficiently diverse viewpoints for effective public discourse.[839] It estimates that elimination of the rule would result in approximately 200 newspapers merging with broadcasters, reducing the number of independent outlets available [840] This, some commenters allege, will cause a reduction in viewpoint diversity [841] We agree that diversity of ownership can promote a diversity of viewpoints and recognize that absent the current rule there will be some consolidation. We conclude, however, that our new local rules will protect the diversity of voices essential to achieving our policy objectives A blanket prohibition on newspaper-broadcast combinations, however, can no longer be sustained.

367. In short, the magnitude of the growth in local media voices shows that there will be a plethora of voices in most or all markets absent the rule. Indeed, the question confronting media companies today is not whether they will be able to dominate the distribution of news and information in any market, but whether they will be able to be heard at all among the cacophony of voices vying for the attention of Americans [842] Our rules should account for these changes and promote, rather than inhibit, the ability of media outlets to survive and thrive in this evolving media landscape.[843] They must "give recognition to the changes which have taken place and to see to it that [they] adequately reflect the situation as it is, not was."[844]

(Continued from previous page)
[836] Major media providers need no convincing, as virtually all of them have rushed to create webpages in an effort to capture a segment of this incipient market For example, MSNBC, Fox News, CNN, the major broadcast television networks and many newspapers all now maintain websites.

[837] *See, e g* , AFL-CIO Reply Comments in MM Docket No 01-235 at 11-12; UCC Comments in MM Docket No. 01-235 at 2-8, Attachments 2, 3 (purporting to show that local broadcast media have become less diverse and more concentrated between 1993 and 2001), UCC Reply Comments in MM Docket No 01-235 at 24-26, Attachments

[838] AFL-CIO Comments at 1-3.

[839] CFA Comments at 283.

[840] *Id* at 244-46.

[841] *See, e g*, AFL-CIO Comments at 36-43, AFTRA Comments at 28-32, CFA Comments at 221-24; CWA Comments at 29-40 (citing, *e g.*, Brown, *supra* note 829

[842] Tribune Comments in MM Docket No 01-235 at 36-38.

[843] *See, e g* , S Rep No 104-23, 104th Cong., 1st Sess. at 64 (1995) (statement of Sen. Burns) (the industry is "now operating under archaic rules that are better suited the 1950s than the 1990s").

[844] *1975 Multiple Ownership Second Report and Order*, 50 F C.C.2d at 1075.

d. Conclusion

368 As discussed above, we find that a newspaper-broadcast combination cannot adversely affect competition in any relevant product market and, thus, we cannot conclude that the current newspaper-broadcast cross-ownership rule is necessary to promote competition. Similarly, we conclude that the evidence in the record of this proceeding demonstrates that combinations can promote the public interest by producing more and better overall local news coverage and that the current rule is thus not necessary to promote our localism goal. Instead, we find that it, in fact, is likely to hinder its attainment. Finally, the record does not contain data or other information demonstrating that common ownership of broadcast stations and daily newspapers in the same community poses a widespread threat to diversity of viewpoint or programming.[845]

369. As outlined above, the types of media and the number of outlets within each media, except daily newspapers, have increased dramatically in the past twenty years. In addition, evidence shows that the link between common ownership of newspapers and broadcast outlets and common viewpoint is tenuous, ill-defined, and difficult to measure In any event, we do not think that the current rule is necessary to preserve diversity of viewpoint. The local cross-media limits adopted herein are more precisely targeted at specific types of markets in which particular combinations are most likely to harm diversity We conclude, therefore, that the current rule is no longer necessary in the public interest.[846]

2. Radio/Television Cross-Ownership Rule

370. The radio/television cross-ownership rule limits the number of commercial radio and television stations an entity may own in a local market. Currently, the rule allows a party to own up to two television stations (provided it is permitted under the television duopoly rule) and up to six radio stations (to the extent permitted under the local radio ownership rule) in a market where at least 20 independently owned media voices[847] would remain post-merger. Where parties may own a combination of two television stations and six radio stations, the rule allows a party alternatively to own one television

[845] *See* CanWest Comments in MM Docket No 01-235 at Appendix A (no structural link between the number of owners and the degree of diversity); NAB Comments in MM Docket No 01-235 at 20-26 (citing David Haddock and Daniel Polsby, *Bright Lines, the Federal Communications Commission's Duopoly Rule and the Diversity of Voices*, 42 FED COMM L J 331 (1990), Benjamin Compaine, *The Impact of Ownership on Content Does It Matter?*, 13 CARDOZO ARTS & ENT L J 755 (1995)).

[846] On March 11, 2003, Media General, Inc, filed a "Motion to Bifurcate and Repeal." That Motion asked the Commission to break the newspaper/broadcast cross-ownership rule out of the biennial review, and repeal the rule, if it could not act in the biennial review in the spring of 2003. Because we are acting in the biennial review in the spring of 2003 and are repealing the subject rule, we dismiss Media General's Motion as moot.

[847] Media voices include (1) independently owned and operating full-power broadcast television stations within the DMA of the television station's community of license that have Grade B signal contours that overlap with the Grade B signal contour of the television station at issue, (2) independently owned and operating broadcast radio stations that are in the radio metro market of the television station's community of license or the radio station's community of license; (3) independently owned out-of-market broadcast radio stations with a minimum share as reported by Arbitron; (4) English-language newspapers that are published at least four days a week within the television station's DMA and that have a circulation exceeding 5 percent of the households in the DMA; and (5) one cable system, if cable television is generally available to households in the DMA. Cable television counts as only one voice in the DMA, regardless of how many individual cable systems operate in the DMA 47 C F.R. § 73 3555(c)(3)

station and seven radio stations. A party may own up to two television stations (as permitted under the current television duopoly rule) and up to four radio stations (as permitted under the local radio ownership rule) in markets where, post-merger, at least ten independently owned media voices would remain A combination of one television station and one radio station is allowed regardless of the number of voices remaining in the market.[848]

371. Based on the record in this proceeding, we do not find that the radio/television cross-ownership rule remains necessary in the public interest to ensure competition, diversity or localism Our decision reflects the substantial growth and availability of media outlets in local markets, as well as the potential for significant efficiencies and public interest benefits to be realized through joint ownership. We find that our diversity and competition goals will be adequately protected by the local ownership rules adopted herein.

372. *Background* In 1970, the Commission restricted the combined ownership of radio and television stations in local markets.[849] The purpose of the rule (originally referred to as the one-to-a-market rule) was twofold: (1) to foster maximum competition in broadcasting, and (2) to promote diversification of programming sources and viewpoints.[850] In 1995, the Commission requested comment to determine whether the cross-ownership limitations were still warranted in light of the then current market conditions.[851] Before the Commission issued a decision, Congress passed the 1996 Act.[852] Section 202(d) of the 1996 Act required the Commission to extend the radio-television cross-ownership presumptive waiver policy to the top 50 television markets "consistent with the public interest, convenience and necessity" Prior to implementing the statutory change, we issued a *Second Further Notice* requesting comment on whether modification of the rule was warranted beyond the Section 202(d) requirements.[853] We asked whether, instead of just extending the waiver policy to the top 50 markets, we should eliminate the rule in its entirety based on a finding that radio and television do not compete in the same market. We also asked whether television and radio stations should be considered competitors, and if the radio/television cross-ownership rule could be eliminated because the respective radio and television ownership rules alone sufficed to ensure sufficient diversity and competition in the local market.[854] In the event we found that the cross-ownership rule was necessary, we sought comment on

[848] 47 C F R § 73 3555(c)

[849] Originally, the rule prohibited the common ownership of commercial radio and television stations in the same market if the 2 mV/m contour of an AM station or the 1 mV/m contour of an FM station encompassed the entire community of license of a television station or, if the Grade A contour of a television station encompassed the entire community of license of an AM or FM station *Amendment of Section 73.35, 73.340 and 73 630 of the Commission's Rule Relating to Multiple Ownership of Standard, FM and TV Broadcast Stations,* 22 F.C C 2d 306, 308 ¶ 8 (1970) ("*1970 Multiple Ownership First Report and Order*").

[850] *Id* at 307 ¶ 3

[851] *TV Ownership FNPRM, supra*

[852] *See* note 1, *supra.*

[853] *Review of the Commission's Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules*, 11 FCC Rcd 21655, 21682-89 ¶¶ 59-89 (1996) ("*TV Second FNPRM*")

[854] *Id* at 21684 ¶ 63.